



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, MNDCT, LRE, LAT, OPR-DR, MNR-DR, FFL

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act
- an order of possession under section 55 of the Act.
- a Monetary Order for unpaid rent under section 55 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- an order to suspend or set conditions on the landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to change the locks to the rental unit under section 70(2) of the Act
- Is the landlord entitled to recover the filing fee for this application from the tenant?

### Preliminary Matters

The 10 Day Notice was issued for nonpayment of rent for June and July of 2023 in the amount of \$1420.00. At the start of the hearing the landlord requested to amend this to include unpaid rent for August, September, and October of 2023. This request is denied as the tenant claims to have evidence that this rent is paid but did not prepare it for this hearing as it is not on the 10 Day Notice.

### Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for unpaid rent?

Is the tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to authorization to change the locks to the rental unit?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

Both parties agree that the Tenant is one of several tenants, each of whom rent a separate bedroom in the rental unit and share the rest of the rental unit as a common area.

The Landlord affirms that the tenant did not pay rent for June and July of 2023 and provided a copy of bank statements from May to October of 2023. The statement for May is the only month that shows an incoming e-transfer of \$710.00, the amount of the tenant's rent. However, it does not show whom the transfer is from.

The Tenant affirms that she paid rent for June and July of 2023 and provided copies of her bank statements for these two months. There are two transactions of \$710.00; one is dated June 5, 2023, and the other is dated July 4, 2023. However, neither transaction shows who it was sent to.

The Landlord alleges that the Tenant sent those two payments to herself, which the tenant denies doing.

The Tenant affirms that when she moved in there was a no pet rule. This is supported by the tenancy agreement and its addendum that states no pets are allowed within the property. The Tenant affirms that the Landlord allowed another tenant to have a cat.

The Landlord affirms that the cat was allowed in the rental unit after receiving permission from all tenants in the unit. The Tenant admits this and admits giving her permission to allow the cat in the rental unit. The Tenant provided a copy of a letter to the Landlord which confirms that she was asked about, and agreed to, the cat being in the the rental unit. The letter also states that the Tenant first saw the cat in July or August of 2021. The letter goes on to say that the major disruption caused by the cat was its coming into the Tenant's bedroom and that the frequency of the cat entering the Tenant's room increased until January or February of 2023 when the cat began entering her room anytime the door was open.

The Tenant attests that she runs a marketing company from her home and that the cat was disruptive enough to her work that she was unable to complete several projects and lost an investor in her company. She provided an email exchange with a client and letter from a possible investor in support of this.

The Tenant affirms that the landlord entered the rental unit without giving proper notice, but admits the landlord only entered the common area and did not enter the Tenant's bedroom. The landlord affirms she gave written notice and provided a photograph of the written notice taped to the rental unit's front door.

The Tenant provided a copy of an RCMP wellness check report which states that the Landlord called RCMP, alleging that the Tenant had been behaving erratically and had sent an email with displaying suicidal intentions. The Tenant did not answer the RCMP's knock but, did answer their phone call and told them she was not suicidal, never sent that email, and that there was an ongoing dispute between herself and the Landlord. RCMP found no reasons for apprehension and advised parties to go through the Residential Tenancy Branch.

The Tenant alleges that the landlord called the RCMP in an effort to cause her trouble. The Landlord affirms it was an honest call and that tenant had previously told her that she had mental health issues and that she was concerned about the Tenant. The Tenant denies ever telling the landlord she has mental health issues.

### Analysis

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the landlord has not shown sufficient grounds to validate the 10 Day Notice and obtain an end to this tenancy.

I find that the tenant provided sufficient evidence in the form of bank records and testimony that rent for July and August of 2023 was paid prior to the issuing of the 10 Day Notice. The fact that there is no name associated with the transfers in question does not negate that they were in the same amount as the rent and done within several days of the rent due date. The landlord's evidence of her own banking history has the same problem, namely there is no name associated with the \$710.00 e-transfer that occurred in May. Furthermore, the landlord provided no evidence that that bank account was the account that rent was to be paid into.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The 10 Day Notice of July 7, 2023, is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the Act.

Is the landlord entitled to a Monetary Order for unpaid rent?

As the 10 Day Notice is cancelled, this issue was not adjudicated and is dismissed, without leave to reapply.

Is the tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

The tenant did not provide evidence that any loss in business was due solely, or in part, to the presence of the cat; a cat which the tenant gave the landlord permission to allow in the home and which her own evidence indicates that she was fine with entering her room for over a year. Under section 7 of the Act a tenant must do whatever is reasonable to minimize the damage or loss, and the tenant did not show evidence of any such efforts, such as closing her bedroom door, once the cat did become a problem.

The tenant is not entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement. This issue is dismissed, without leave to reapply.

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

The tenant did not provide any evidence of the landlord entering the rental unit other than as authorized under section 29 of the Act, and the landlord affirms they always provided written notice and they provided a picture of said notice on the rental unit door. The tenant also admits the landlord did not enter her own bedroom, but just the common area.

For the above reasons, the tenant's application for an order to suspend or set conditions on the landlord's right to enter the rental unit under section 70(1) of the Act is dismissed, without leave to reapply.

Is the tenant entitled to authorization to change the locks to the rental unit?

As I am satisfied the landlord is not likely to enter the rental unit other than as authorized under section 29 of the Act, I find that the tenant is not authorised under section 70 to change the locks to the rental unit. This issue is dismissed, without leave to reapply.

Is the landlord entitled to recover the filing fee for this application from the tenant?

As the tenant was successful in the cancellation of the 10 Day Notice, the landlord's application for authorization to recover the filing fee for their application from the tenant under section 72 of the Act is dismissed, without leave to reapply.

### Conclusion

The tenant's application is granted for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act.

The 10 Day Notice of July 17, 2023, is cancelled and is of no force or effect.

This tenancy continues until it is ended in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 30, 2023

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Residential Tenancy Branch